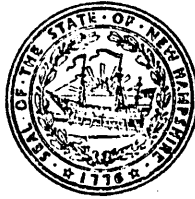


The State of New Hampshire

original material  
in 54.2

opinion



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November 14, 1974

Roy Y. Lang, Director  
Department of Personnel  
State House Annex  
Concord, New Hampshire 03301

Dear Mr. Lang:

By your letter of September 25, 1974, you have asked whether the provisions of the Administrative Procedure Act, RSA 541-A(supp), are applicable upon the occasion of an amendment of the Rules of the Department of Personnel. Your question contains a qualification which appears to anticipate the basis upon which it may be answered, to wit: that the rules to be amended are such as will affect only persons currently in the State classified service, rather than members of the general public seeking employment.

In our opinion, the distinction which you have drawn is significant and is dispositive of the question. RSA 541-A:3(III) (supp) contains the operative language in matters of rule adoption and, by extension, rule amendment. That subsection provides in pertinent part that

"No rule hereafter adopted is valid unless adopted in substantial compliance with this section." [Emphasis added]

RSA 541-A:1(IV) (supp) sets out the definition of the word "rule" as it appears in the Act:

"Rule shall mean each agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include (a) statements

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concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (b) declaratory rulings issued pursuant to RSA 541:8, or (c) intra-agency memoranda. [Emphasis added]

The singular "agency" may be read in the plural where appropriate. RSA 21:3. Thus, the general applicability of Personnel Rules to State departments and agencies does not by itself alter the posture of those rules under the above language.

The effect of the provisions above quoted, taken together, is to exclude matters not comprehended by RSA 541-A:1(IV) (supp) from the scope, and thus the requirements, of the Act. Given the qualification contained in your question limiting its scope to rules affecting only presently employed personnel and not affecting the public at large, it is our opinion that additions, deletions and amendments of Personnel Rules within the class so defined come within the exclusory language of RSA 541-A:1(IV) (supp) as underlined above, and thus are not subject to the provisions of the Administrative Procedure Act.

Sincerely,



Warren B. Rudman  
Attorney General



Charles G. Cleaveland  
Assistant Attorney General